

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 44 of 1984

in

FIRST APPEAL No 1014 of 1979

with

LETTERS PATENT APPEAL NO. 45 OF 1984

in

FIRST APPEAL NO. 1015 OF 1979

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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PARSHOTTAM VALJIBHAI

Versus

JAY AMBE CARD CANE WORKS

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Appearance:

MR GAUTAM JOSHI WITH MR HB SHAH for Appellant

MR SB VAKIL for Respondent No. 1

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CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE C.K.BUCH

Date of decision: 27/11/98

Against the decision of learned Single Judge dated 20.12.1983 in First Appeal Nos. 1014/79 and 1015/79, these Letters Patent Appeals are preferred by the original defendants. Before the learned Single Judge, decision rendered in four Civil Suits which were tried together and disposed of by the trial Court by a

common judgment, was attacked by the original plaintiff and on appreciation of evidence, learned Single Judge allowed the said appeals and set aside the judgment and decree passed by the trial Court. It is against this decision of learned Single Judge, the original defendants have preferred these two Letters Patent Appeals. As the defendants were occupying huts in a part of land bearing No. 66/67 of Shahpur Ward, Near Municipal Fire Brigade, Shahpur, Ahmedabad, the plaintiff approached the Court, inter alia, alleging that the respondents were mere trespassers and that they should be evicted.

The plot in question was handed over to one Hiraben Hargovandas by a registered lease-deed for a period of 999 years by one Kazambhai Amirbai on October 19, 1954. However, the said lease was cancelled on February 8, 1966. On the same day, said plot of land was transferred to Arvind Hargovandas & others. The plaintiff firm purchased this piece of land from Arvind Hargovandas and his co-sharers. As contended in the plaint, the land was open and was not let to any one or any portion of land was not let to any one. Without consent or permission of the owner, the defendants committed trespass and fraudulently got their names entered in the municipal record without paying any tax. From the judgment, it transpires that the trial Court was called upon to determine two issues namely (i) whether the plaintiff firm proves that the defendants were trespassers on the suit land, and (ii) whether the defendant proves that they were tenant in respect of the portion of land which was in occupation of each defendant? As said earlier, the trial Court has held

that the plaintiff firm failed to prove that the defendants were trespassers and dismissed the suit.

Against the said judgment and decree, in all seven appeals were preferred as there were seven (7) suits. At the time of hearing, only four appeals were required to be disposed of and others were withdrawn or settled out of the court. Today, when we are hearing appeals, two Letters Patent Appeals namely LPA No.43/84 and 46/84 have been settled out of the Court. Learned Single Judge pointed out that even if trespass might have

been committed prior to 1970-71, but that would not necessarily indicate that the occupation of the said suit plot was referable to any valid title derived by them by way of tenancy or by way of licence. It transpires that one Nanji Rupa used to collect some amount from the occupiers. That Nanji Rupa had no title. Said Nanji Rupa was not examined before the trial Court. It was suggested that witness's brother engaged Nanji Rupa as a Watchman which was repelled by the witness. As observed by the learned Single Judge, the defendants were trying to bring in Nanji Rupa from thin air as a person managing the property on behalf of some previous owner so that they can buttress their claim of tenancy. Learned Single Judge pointed out that "said attempt has miserably failed and this circumstance also prompts me to hold that the receipts allegedly given by Nanji Rupa are spurious." Therefore, in view of the aforesaid finding, we put a specific question that if the defendants were claiming that Nanji Rupa was collecting rent, then why Nanji Rupa was not examined by them ? There was no answer to this

question. Learned Single Judge further pointed out that "These receipts do not appear to be genuine as stated above and not only that even if Nanji Rupa had issued these receipts, Nanji Rupa had no title over the said land whereby relationship of landlord and tenant could have been established between the owners of the land and the respondents- original defendants. Nanji Rupa does not seem to have issued the receipts under the authority of the true owner, nor on behalf of the true owner. The respondents- original defendants are seriously silent on the point as to from which predecessor-in-title of the appellant- original plaintiff, they had taken land on lease."

Considering the finding recorded by the learned Single Judge on appreciation of evidence, we put a question as to why Nanji Rupa was not examined? It is required to be noted that the contention that the defendants became owners, was not pressed before the trial Court. In our opinion, reliance cannot be placed on the municipal register because it would not give any clue as to from whom defendants obtained right to occupy the huts. Examining a doctor before the Court or producing a School Leaving Certificate would merely indicate occupancy, but would not prove any title. The suit was obviously required to be filed because they were occupying of as trespassers. That was admitted position that they were occupying. But the question was whether they were occupying as tenants or were trespassers. Defendants relied on electoral roll stating that their

names along with family members are shown. Electoral roll pertains to block no.77 whereas the suit lands are covered by block no.66 & 67. In that electoral roll, Nanji Rupa was shown as the occupant of some part of block no.77. Thus, on appreciation of evidence, learned Single Judge, after taking into consideration several aspects, has reached the finding and has held that the defendants' claim is hoax. In view of the finding, we would not like to interfere with the order passed by the learned Single Judge.

Mr. Shah, learned counsel for the appellant submitted that in view of a notification dated 4.11.1988 issued under the provisions of the Gujarat Town Planning & Urban Development Act, 1976, as the block vests in the appropriate authority, the plaintiff has no right to claim possession. In view of preliminary scheme, reliance is placed on S.67 of the Gujarat Town Planning & Urban Development Act, 1976 which reads as under :-

"67. On the day on which the preliminary scheme comes into force--

- (a) all lands required by the appropriate authority shall, unless it is otherwise determined in such scheme, vest absolutely in the appropriate authority free from all encumbrances ;
- (b) all rights in the original plots which have been reconstituted into final plots shall determine and the final plots shall become subject to the rights settled by the Town Planning Officer."

It is submitted that in view of these provisions, this plot vests absolutely in the appropriate authority and, therefore, the plaintiff has no right or title over the said property.

Reliance is also placed on the provisions contained in the Gujarat Slum Areas ( Improvement, Clearance & Redevelopment ) Act, 1973. Attention of the Court was drawn to Sec.2(g) which reads as under :-

"2(g). "Occupier" includes--

- (i) any person who for the time being is paying or is liable to pay to the owner the rent or any portion of the rent of the land or building in respect of which such rent is paid or

is payable;

- (ii) an owner in occupation of, or otherwise using, his land or building;
- (iii) a rent-free tenant of any land or building;
- (iv) a licensee in occupation of any land or building; and
- (v) any person who is liable to pay to the owner damages for the use, and occupation of any land or building;

It was submitted that though the defendants are occupying huts under the orders of the Court, none the less, they are occupiers as defined herein above and they cannot be removed. We are not deciding the matter which is to be decided by the appropriate authority under the aforesaid Acts. The learned Single Judge was not called upon to determine the right of a person under the aforesaid provisions. Mr. Shah submitted that in view of the aforesaid notification, defendant should be protected. Notification has been published in 1988 much after the suit came to be filed and after filing of the Letters Patent Appeals. Therefore, in our opinion, if the question is raised before any authority or forum with regard to the applicability of the Act and the protection under the said Act, it will be for such authority

concerned to decide the same in accordance with law and not for this Court hearing the Letters Patent Appeals to decide the same at this stage.

In the result, both the Letters Patent Appeals are hereby dismissed with no orders as to costs.

At the oral request of learned counsel Mr. Shah, we direct that for a period of six weeks, the defendants shall not be evicted if the affidavits are filed by them in this Court giving an undertaking to this Court stating on oath that the occupants shall not transfer the huts which they are occupying to any one else in any manner whatsoever. Affidavit to be filed within a period of one week from today.

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